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EXAMINER	
FLANDERS, ANDREW C	

ART UNIT	PAPER NUMBER
2644	

DATE MAILED: 06/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/972,381	FAHEY ET AL.	
	Examiner	Art Unit	
	Andrew C. Flanders	2644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 October 2001*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-37* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-37* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *05 October 2001* is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. The disclosure is objected to because of the following informalities: There is no Summary of the invention section.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. **Claims 1 – 29 and 34 - 36** are rejected under 35 U.S.C. 103(a) as being unpatentable over Rigopulos (U.S. Patent 5,763,804) in view of Hruska (U.S. Patent Application Publication 2001/017415).

Regarding **Claim 1**, Rigopulos discloses a method for creating a polyphonic audio mix on a device having a soundtrack data set file stored thereon (i.e. a computer with stored MIDI files and other various instrument and musical selections for creating a music file; col. 8 lines 50 – 55 and col. 9 lines 1 – 13) comprising:

entering a first reference data for a first soundtrack of the soundtrack data set file into an audio mix data reference file by selecting the first soundtrack (i.e. the user

selects a particular background or accompaniment track from a list of a plurality of possible tracks; col. 8 lines 40 - 50);

entering second reference data for a second soundtrack of the soundtrack data set file into the audio mix data reference file by selecting the second soundtrack (i.e. the user selects an instrument from a list of a plurality of possible instruments; col. 8 lines 65 – 67);

the audio mix data reference file having the first and second reference data representative of a user defined polyphonic audio mix (i.e. when the user makes a selection from the plurality of choices available for each of the user-selectable items, the whole set of data/variables associated with that selection for that item are loaded into memory; col. 9 lines 25 – 32); and

storing the audio mix data reference file having the first and second reference data on the device separately from the soundtrack data set file (i.e. the whole set of data/variables associated with that selection for that item are loaded into memory; col. 9 lines 25 – 32).

Rigopulos does not explicitly the device as a handheld mobile wireless communication device.

Hruska discloses a handheld mobile wireless communication device (i.e. a mobile device capable of playing and rearranging musical songs on mobile devices; paragraphs 1, 2 and 3).

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Rigopulos music creation method on Hruska's mobile device.

One would have been motivated to do so because of the desire for an entertaining musical game and musical composer that operates with mobile devices; see Hruska paragraph 3.

Regarding **Claim 2**, in addition to the elements stated above regarding claim 1, Rigopulos further discloses:

entering first time data associated with the first reference data into the audio mix data reference file (i.e. rhythm blocks for defining a time at which the note should be played; col. 3 lines 5 - 11);

entering second time data associated with the second reference data into the audio mix data reference file (i.e. indicating the user wants to play fewer notes over time in the given time signature; col. 7 lines 9 – 15).

Regarding **Claim 3**, in addition to the elements stated above regarding claim 1, Rigopulos further discloses:

entering tempo data associated with the user defined polyphonic audio mix into the audio mix data reference file (i.e. each of the background tracks include a tempo track; col. 10 lines 59 – 63).

Regarding **Claim 4**, in addition to the elements stated above regarding claim 1, Rigopulos further discloses:

entering reference soundtrack data into the audio mix data reference file (i.e. the user selects a particular background or accompaniment track from a list of a plurality of possible tracks; col. 8 lines 40 – 50 and when the user makes a selection from the plurality of choices available for each of the user-selectable items, the whole set of data/variables associated with that selection for that item are loaded into memory; col. 9 lines 25 – 32).

Regarding **Claim 5**, in addition to the elements stated above regarding claim 1, Rigopulos further discloses:

entering the first reference data by selecting the first soundtrack (i.e. the user selects a particular background or accompaniment track from a list of a plurality of possible tracks; col. 8 lines 40 – 50 and the computer waits until the user presses a start button and when it has been indicated the playback of the background track commences; col. 9 lines 32 – 38);

entering the second reference data by selecting the second soundtrack while the first soundtrack is playing (i.e. the user is only allowed to create and play a melody after the accompaniment has been started; col. 7 lines 60 – 65); and

playing the second soundtrack with the first soundtrack after selecting the second soundtrack (i.e. after the background has begun playing, the user may begin playing the melody which plays at the same time; col. 7 lines 35 – 65).

Regarding **Claim 6**, in addition to the elements stated above regarding claim 1, Rigopulos further discloses:

entering the first reference data by selecting the first soundtrack (i.e. the user selects a particular background or accompaniment track from a list of a plurality of possible tracks; col. 8 lines 40 – 50 and the computer waits until the user presses a start button and when it has been indicated the playback of the background track commences; col. 9 lines 32 – 38);

entering first effect reference data for a first soundtrack effect of the soundtrack data set file by selecting the first soundtrack effect while the first soundtrack is playing (i.e. the joystick enables the user to sustain a current note or alter the pitch (col. 7 liens 66 – 67 and col. 8 lines 1 – 18);

playing the first soundtrack effect with the first soundtrack upon selecting the first soundtrack effect (i.e. the user is only allowed to create and play a melody (alter the pitch or sustain a note with the joystick) after the accompaniment has been started; col. 7 lines 60 – 65).

Regarding **Claim 7**, in addition to the elements stated above regarding claim 1, Rigopulos further discloses:

integrating the audio mix data reference file and the soundtrack data set file into a common audio format file (i.e. the computer has a MIDI output stream; col. 19 lines 10 – 15).

Regarding **Claim 8**, in addition to the elements stated above regarding claim 1, Rigopulos further discloses irreversibly integrating the audio mix data reference file and the soundtrack data set file into a common audio format file (i.e. the MIDI output file may be recorded to save a performance for future access; col. 19 lines 15 – 21).

Regarding **Claim 9**, in addition to the elements stated above regarding claim 1, Rigopulos further discloses:

playing the user defined polyphone audio mix on the handheld mobile wireless communication device by playing the first and second soundtracks of the soundtrack data set file referenced by the first and second reference data in the audio mix data reference file (i.e. the user selects a particular background or accompaniment track from a list of a plurality of possible tracks; col. 8 lines 40 – 50 and the user selects an instrument from a list of a plurality of possible instruments; col. 8 lines 65 – 67 when the user makes a selection from the plurality of choices available for each of the user-selectable items, the whole set of data/variables associated with that selection for that item are loaded into memory; col. 9 lines 25 – 32 and this is played back when the user presses start; col. 7 lines 52 – 65).

Regarding **Claim 10**, Rigopulos discloses a method for playing a polyphonic audio mix on a device having a soundtrack data set file stored thereon (i.e. a computer with stored MIDI files and other various instrument and musical selections for creating and playing a music file; col. 8 lines 50 – 55 and col. 9 lines 1 – 13) comprising:

playing a first soundtrack of the soundtrack data set file referenced in an audio mix data reference file (i.e. the user starts the accompaniment track by pressing a start button; col. 7 lines 60 – 65);

playing a second soundtrack of the soundtrack data set file referenced in the audio mix data reference file (i.e. the user depresses and holds the play button to start the melody; col. 7 lines 50 – 60);

the audio mix file devoid of soundtrack data of the soundtrack data set file (i.e. the mix is created from the previously selected background track and the user melody; col. 7 lines 9 – 65);

the audio mix file stored separately from the soundtrack data set file on the device (i.e. when the user makes a selection from the plurality of choices available for each of the user-selectable items, the whole set of data/variables associated with that selection for that item are loaded into memory; col. 9 lines 25 – 32).

Rigopulos does not explicitly the device as a handheld mobile wireless communication device.

Hruska discloses a handheld mobile wireless communication device (i.e. a mobile device capable of playing and rearranging musical songs on mobile devices; paragraphs 1, 2 and 3).

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Rigopulos music creation method on Hruska's mobile device. One would have been motivated to do so because of the desire for an entertaining

musical game and musical composer that operates with mobile devices; see Hruska paragraph 3.

Regarding **Claim 11**, in addition to the elements stated above regarding claim 10, Rigopulos further discloses:

playing the first and second soundtracks at times specified by the audio mix data reference file (i.e. the accompaniment track and melody track are not played until the user presses the corresponding start and play buttons; col. 7 lines 51 – 65).

Regarding **Claim 12**, in addition to the elements stated above regarding claim 10, Rigopulos further discloses:

playing the user defined polyphonic audio mix on the handheld mobile wireless communication device at a tempo specified by the audio mix data reference file (i.e. the user can alter the tempo via the joystick; col. 7 lines 9 – 34 and the user entered data is stored in memory col. 9 lines 29 – 33).

Regarding **Claim 13**, in addition to the elements stated above regarding claim 10, Rigopulos further discloses irreversibly integrating the audio mix data reference file and the soundtrack data set file into a common audio format file (i.e. the MIDI output file may be recorded to save a performance for future access; col. 19 lines 15 – 21).

Regarding **Claim 14**, Rigopulos discloses a method for a polyphonic audio mix on a device having a soundtrack data set file and an audio mix data reference file stored separately thereon (i.e. when the user makes a selection from the plurality of choices available for each of the user-selectable items, the whole set of data/variables associated with that selection for that item are loaded into memory; col. 9 lines 25 – 32) comprising:

integrating the audio mix data reference file and the soundtrack data set file into a common audio format file (i.e. the computer has a MIDI output stream; col. 19 lines 10 – 15);

the audio mix data reference file having first and second soundtrack reference data referencing first and second soundtracks of the soundtrack data set file (i.e. the user selects a particular background or accompaniment track from a list of a plurality of possible tracks; col. 8 lines 40 – 50 and the user selects an instrument from a list of a plurality of possible instruments; col. 8 lines 65 – 67 when the user makes a selection from the plurality of choices available for each of the user-selectable items, the whole set of data/variables associated with that selection for that item are loaded into memory; col. 9 lines 25 – 32); and

the audio mix file devoid of soundtrack data of the soundtrack data set file (i.e. the mix is created from the previously selected background track and the user melody; col. 7 lines 9 – 65).

Rigopulos does not explicitly the device as a handheld mobile wireless communication device or uploading the common audio format file from the handheld mobile wireless communication device.

Hruska discloses a handheld mobile wireless communication device (i.e. a mobile device capable of playing and rearranging musical songs on mobile devices; paragraphs 1, 2 and 3); and

Uploading the common audio format file from the handheld mobile wireless communication device (paragraph 92).

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Rigopulos music creation method on Hruska's mobile device. One would have been motivated to do so because of the desire for an entertaining musical game and musical composer that operates with mobile devices; see Hruska paragraph 3.

Regarding **Claim 15**, in addition to the elements stated above regarding claim 14, Rigopulos further discloses irreversibly integrating the audio mix data reference file and the soundtrack data set file into a common audio format file (i.e. the MIDI output file may be recorded to save a performance for future access; col. 19 lines 15 – 21).

Regarding **Claim 16**, in addition to the elements stated above regarding claim 14, Rigopulos further discloses, before integrating, creating the audio mix data by entering first reference data for the first soundtrack into the audio mix data reference file

(i.e. the user selects a particular background or accompaniment track from a list of a plurality of possible tracks; col. 8 lines 40 – 50) and by entering second reference data for the second soundtrack into the audio mix data reference file (i.e. the user selects an instrument from a list of a plurality of possible instruments; col. 8 lines 65 – 67 when the user makes a selection from the plurality of choices available for each of the user-selectable items, the whole set of data/variables associated with that selection for that item are loaded into memory; col. 9 lines 25 – 32).

Regarding **Claim 17**, in addition to the elements stated above regarding claim 16, Rigopulos further discloses entering corresponding time data associated with the first and second reference data into the audio mix data reference file (i.e. rhythm blocks for defining a time at which the note should be played; col. 3 lines 5 – 11 and indicating the user wants to play fewer notes over time in the given time signature; col. 7 lines 9 – 15).

Regarding **Claim 18**, Rigopulos discloses a method for a polyphonic audio mix on a device (i.e. a computer with stored MIDI files and other various instrument and musical selections for creating a music file; col. 8 lines 50 – 55 and col. 9 lines 1 – 13) comprising:

selecting a first soundtrack (i.e. the user selects a particular background or accompaniment track from a list of a plurality of possible tracks; col. 8 lines 40 - 50);

playing the first soundtrack upon selecting the first soundtrack (i.e. the user starts the accompaniment track by pressing a start button; col. 7 lines 60 – 65);

selecting a second soundtrack while playing the first soundtrack; and

playing the second soundtrack upon selecting the second soundtrack while playing the first soundtrack (i.e. after the background has begun playing, the user may begin playing the melody which plays at the same time; col. 7 lines 35 – 65).

Rigopulos does not explicitly the device as a handheld mobile wireless communication device.

Hruska discloses a handheld mobile wireless communication device (i.e. a mobile device capable of playing and rearranging musical songs on mobile devices; paragraphs 1, 2 and 3).

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Rigopulos music creation method on Hruska's mobile device. One would have been motivated to do so because of the desire for an entertaining musical game and musical composer that operates with mobile devices; see Hruska paragraph 3.

Regarding **Claim 19**, in addition to the elements stated above regarding claim 18, Rigopulos discloses:

entering a first reference data for a first soundtrack of the soundtrack data set file into an audio mix data reference file by selecting the first soundtrack (i.e. the user

selects a particular background or accompaniment track from a list of a plurality of possible tracks; col. 8 lines 40 - 50);

entering second reference data for a second soundtrack of the soundtrack data set file into the audio mix data reference file by selecting the second soundtrack (i.e. the user selects an instrument from a list of a plurality of possible instruments; col. 8 lines 65 – 67);

the audio mix data reference file having the first and second reference data representative of a user defined polyphonic audio mix (i.e. when the user makes a selection from the plurality of choices available for each of the user-selectable items, the whole set of data/variables associated with that selection for that item are loaded into memory; col. 9 lines 25 – 32); and

storing the audio mix data reference file on the handheld mobile wireless communication device (i.e. the whole set of data/variables associated with that selection for that item are loaded into memory; col. 9 lines 25 – 32).

Regarding **Claim 20**, in addition to the elements stated above regarding claim 19, Rigopulos further discloses:

playing the user defined polyphone audio mix on the handheld mobile wireless communication device by playing the first and second soundtracks of the soundtrack data set file referenced in the audio mix data reference file (i.e. the user selects a particular background or accompaniment track from a list of a plurality of possible tracks; col. 8 lines 40 – 50 and the user selects an instrument from a list of a plurality of

possible instruments; col. 8 lines 65 – 67 when the user makes a selection from the plurality of choices available for each of the user-selectable items, the whole set of data/variables associated with that selection for that item are loaded into memory; col. 9 lines 25 – 32 and this is played back when the user presses start; col. 7 lines 52 – 65).

Regarding **Claim 21**, in addition to the elements stated above regarding claim 18 Rigopulos further discloses:

selecting the first soundtrack from a first plurality of soundtrack perceptible by a user of the handheld mobile wireless communication device (i.e. the user selects a particular background or accompaniment track from a list of a plurality of possible tracks; col. 8 lines 40 – 50); and

selecting the second soundtrack from a second plurality of soundtrack perceptible by a user of the handheld mobile wireless communication device (i.e. (i.e. the user selects an instrument from a list of a plurality of possible instruments; col. 8 lines 65 – 67).

Regarding **Claim 22**, in addition to the elements stated above regarding claim 18, Rigopulos further discloses:

at least one of the soundtracks is a reference soundtrack, selecting the reference soundtrack before selecting a subsequent soundtrack (i.e. the user selects an accompaniment soundtrack before selecting anything else; col. 8 lines 40 – 50).

Regarding **Claim 23**, in addition to the elements stated above regarding claim 22, Rigopulos further discloses:

Selecting at least one subsequent soundtrack after selecting the reference soundtrack while the reference soundtrack is playing, mixing the at least one subsequent soundtrack selected with the reference soundtrack upon selecting the subsequent soundtrack (i.e. after selecting the accompaniment track the user is permitted to select an instrument from a plurality of possible instruments; col. 8 lines 66 – 67; and the user is only allowed to create a melody after the accompaniment has been started; col. 7 lines 60 – 65).

Regarding **Claim 24**, in addition to the elements stated above regarding claim 18, Rigopulos further discloses:

selecting the first soundtrack from a plurality of reference soundtracks each having corresponding rhythmic and harmonic characteristics (i.e. the user selects an accompaniment soundtrack from a plurality of MIDI files; col. 8 lines 40 – 50).

Regarding **Claim 25**, in addition to the elements stated above regarding claim 24, Rigopulos further discloses:

Selecting the second soundtrack from a plurality of soundtracks having a corresponding melody (i.e. the user selects an instrument from a plurality of possible instruments for creating a melody; col. 8 lines 66 – 67)

Regarding **Claim 26**, in addition to the elements stated above regarding claim 18, Rigopulos discloses stopping the playing of the first soundtrack while the first and second soundtracks are playing (Fig 3 element 15).

Regarding **Claim 27**, in addition to the elements stated above regarding claim 18, Rigopulos discloses selecting an audio characteristic for at least one of the selected soundtracks while playing the soundtrack for which the audio characteristic is selected, changing the audio characteristic of the selected soundtrack while the soundtrack is playing upon selecting the audio characteristic (i.e. the user may press and continue to press a sustain button to indicate to the computer that the note currently playing should be sustained or held such that it continues to sound until the user releases the sustain button; col. 7 lines 66 – 67 and col. 8 lines 1 – 5).

Regarding **Claim 28**, in addition to the elements stated above regarding claim 18, Rigopulos further discloses selecting a global audio characteristic common to all selected soundtrack while playing the selected soundtracks for which the global audio characteristic is selected, changing the audio characteristic of all selected soundtracks while the soundtracks are playing upon selecting the global audio characteristic (i.e. the system contains a rhythm generator that can be altered by the user allowing the user to improvise the music; col. 14 lines 12 – 26).

Regarding **Claim 29**, in addition to the elements stated above regarding claim 18, Rigopulos discloses:

selecting the first soundtrack to play for a first time interval (i.e. the user starts the accompaniment track by pressing a start button; col. 7 lines 60 – 65);

selecting the second soundtrack o play for a second time interval different than the first time interval (i.e. the user can start and stop the melody; col. 7 lines 60 – 65).

Regarding **Claim 34**, Rigopulos discloses a method for creating a polyphonic audio mix on a device (i.e. a computer with stored MIDI files and other various instrument and musical selections for creating a music file; col. 8 lines 50 – 55 and col. 9 lines 1 – 13) comprising:

selecting the first soundtrack having a first time interval (i.e. the user starts the accompaniment track by pressing a start button; col. 7 lines 60 – 65);

selecting the second soundtrack having a second time interval, the second time interval different than the first time interval (i.e. the user can start and stop the melody; col. 7 lines 60 – 65);

mixing the first and second soundtracks (i.e. the user can play a melody over the accompaniment track; col. 7 lines 60 – 65).

Rigopulos does not explicitly the device as a handheld mobile wireless communication device.

Hruska discloses a handheld mobile wireless communication device (i.e. a mobile device capable of playing and rearranging musical songs on mobile devices; paragraphs 1, 2 and 3).

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Rigopulos music creation method on Hruska's mobile device. One would have been motivated to do so because of the desire for an entertaining musical game and musical composer that operates with mobile devices; see Hruska paragraph 3.

Regarding **Claim 35**, in addition to the elements stated above regarding claim 34, Rigopulos further discloses:

If the time interval of the first and second soundtracks overlaps, selecting the second soundtrack while the first soundtrack is playing and playing the second soundtrack with the first soundtrack upon selection of the second soundtrack (i.e. the user can play a melody over the accompaniment track; col. 7 lines 60 – 65).

Regarding **Claim 36**, in addition to the elements stated above regarding claim 34, Rigopulos further discloses:

saving an audio mix reference file corresponding to a polyphonic audio mix, the audio mix reference file referencing the first and second soundtracks stored in a separate file (i.e. when the user makes a selection from the plurality of choices available

for each of the user-selectable items, the whole set of data/variables associated with that selection for that item are loaded into memory; col. 9 lines 25 – 32); and

playing the polyphonic audio mix by referencing the first and second soundtracks with the audio mix reference file (i.e. after the background has begun playing, the user may begin playing the melody which plays at the same time; col. 7 lines 35 – 65).

Claims 30 – 33 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rigopulos (U.S. Patent 5,763,804) in view of Hruska (U.S. Patent Application Publication 2001/017415) and in further view of Furukawa (U.S. Patent 5,804,755).

Regarding **Claim 30**, Rigopulos discloses a method for crating a polyphonic audio mix on a device (i.e. a computer with stored MIDI files and other various instrument and musical selections for creating a music file; col. 8 lines 50 – 55 and col. 9 lines 1 – 13) comprising:

playing the first soundtrack upon selecting the first soundtrack (i.e. the user starts the accompaniment track by pressing a start button; col. 7 lines 60 – 65).

Rigopulos does not explicitly the device as a handheld mobile wireless communication device.

Hruska discloses a handheld mobile wireless communication device (i.e. a mobile device capable of playing and rearranging musical songs on mobile devices; paragraphs 1, 2 and 3).

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Rigopulos music creation method on Hruska's mobile device. One would have been motivated to do so because of the desire for an entertaining musical game and musical composer that operates with mobile devices; see Hruska paragraph 3.

Furthermore, the combination of Rigopulos in view of Hruska fails to disclose selecting an audio characteristic for the selected first soundtrack while playing the first soundtrack or playing the selected audio characteristic of the first soundtrack while playing the first soundtrack upon selecting the audio characteristic.

Furukawa discloses:

selecting an audio characteristic for the selected first soundtrack while playing the first soundtrack or playing the selected audio characteristic of the first soundtrack while playing the first soundtrack upon selecting the audio characteristic (i.e. the instrument comprises a manipulating panel that includes a plurality of switches which allows the player to apply effects to the stereophonic sounds; col. 6 lines 30 – 38)

It would be obvious to one of ordinary skill in the art at the time of the invention to add an effect altering mechanism to the accompaniment track disclosed by the combination of Rigopulos in view of Hruska. Many instruments contain real-time effects which can be altered, such as a guitar pedal or a keyboard with a tempo altering

mechanism. One would be motivated to add these features to the Rigopulos/Hruska combination to give the user greater freedom to create a more unique playback track.

Regarding **Claim 31**, in addition to the elements stated above regarding claim 30, Rigopulos further discloses:

the first soundtrack is a reference sound track (i.e. the background accompaniment tack; col. 8 lines 45 – 50);

selecting the first soundtrack from a plurality of different reference soundtracks (i.e. the accompaniment track is selected from a plurality of tracks; col. 8 lines 45 – 50);

selecting a second soundtrack from a plurality of non-reference soundtracks (i.e. the user selects an instrument from a plurality of possible instruments; col. 8 lines 66 – 67); and

playing the second soundtrack upon selecting the second soundtrack while the reference soundtrack is playing (i.e. the melody can only be played after the accompaniment has been started; col. 7 lines 60 – 65).

The combination of Rigopulos in view of Hruska does not explicitly disclose selecting the second soundtrack while the reference soundtrack is playing. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to do so. One would have been motivated to allow a user of the system of the combination to change the instrument while playing the accompaniment song in order to allow for different instrument playbacks during different segments of the accompaniment song.

Regarding **Claim 32**, in addition to the elements stated above regarding claim 31, Rigopulos further discloses:

selecting the second soundtrack from a plurality of musical instrument soundtracks (i.e. the user selects an instrument from a plurality of possible instruments; col. 8 lines 66 – 67).

Regarding **Claim 33**, in addition to the elements stated above regarding claim 30, Rigopulos discloses stopping the playing of the first soundtrack, stopping the playing of the audio characteristic for the first soundtrack upon stopping the playing of the first soundtrack (Fig 3 element 15; it is inherent that stopping playback of the accompaniment track would stop the effect from being applied since there would be no track to apply it to.).

Regarding **Claim 37**, Rigopulos discloses a method for creating a polyphonic audio mix on a device (i.e. a computer with stored MIDI files and other various instrument and musical selections for creating a music file; col. 8 lines 50 – 55 and col. 9 lines 1 – 13) comprising:

playing a first soundtrack by selecting the soundtrack (i.e. the user starts the accompaniment track by pressing a start button; col. 7 lines 60 – 65).

selecting one of a second soundtrack soundtracks (i.e. the user selects an instrument from a plurality of possible instruments; col. 8 lines 66 – 67);

if the second soundtrack is selected, playing the second soundtrack with the first soundtrack upon selecting the second soundtrack without further input by user (i.e. the melody can only be played after the accompaniment has been started; col. 7 lines 60 – 65).

The combination fails to disclose selecting an audio characteristic of the first soundtrack while playing first soundtrack or if the audio characteristic is selected, playing the audio characteristic of the first soundtrack upon selecting the audio characteristic while playing the first soundtrack without further input by user.

Furthermore, the combination of Rigopulos in view of Hruska fails to disclose selecting an audio characteristic for the selected first soundtrack while playing the first soundtrack or playing the selected audio characteristic of the first soundtrack while playing the first soundtrack upon selecting the audio characteristic.

Furukawa discloses:

selecting an audio characteristic of the first soundtrack while playing first soundtrack and if the audio characteristic is selected, playing the audio characteristic of the first soundtrack upon selecting the audio characteristic while playing the first soundtrack without further input by user (i.e. the instrument comprises a manipulating panel that includes a plurality of switches which allows the player to apply effects to the stereophonic sounds; col. 6 lines 30 – 38)

It would be obvious to one of ordinary skill in the art at the time of the invention to add an effect altering mechanism to the accompaniment track disclosed by the combination of Rigopulos in view of Hruska. Many instruments contain real-time effects

which can be altered, such as a guitar pedal or a keyboard with a tempo altering mechanism. One would be motivated to add these features to the Rigopulos/Hruska combination to give the user greater freedom to create a more unique playback track.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Birrell (U.S. 6,332,175), Van Ryzin (U.S. 6,446,080), Benyamin (U.S. 6,721,489) and Aoki (U.S. 6,124,543).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew C. Flanders whose telephone number is (571) 272-7516. The examiner can normally be reached on M-F 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on (571) 272-7564. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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